



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

California Mobile Communications

Matter of:

B-224398

File:

Date:

August 29, 1986

DIGEST

1. General Accounting Office (GAO) will not consider the merits of an allegation that more restrictive specifications are necessary to meet the government's needs. GAO's role in resolving bid protests is to ensure that statutory requirements for full and open competition have been met; protester's interest in benefitting from more restrictive specifications is not protectable under this bid protest function.
2. Protest speculating that other bidders may not qualify as manufacturers or regular dealers under the Walsh-Healey Public Contracts Act is dismissed because an agency's determination concerning the status of a bidder under that act is subject to review by the Small Business Administration (if a small business is involved) and the Department of Labor, not General Accounting Office.
3. The Buy American Act does not prohibit bidding by foreign entities or the procurement of foreign products but merely establishes a preference evaluation system for domestic goods.

DECISION

California Mobile Communications (CMC) protests under invitation for bids (IFB) No. N00612-86-B-0623, issued by the United States Navy for commercial-grade medium frequency and high frequency communications receivers.

We dismiss the protest.

CMC alleges that the specifications are inadequate to ensure that a responsive bid would meet the agency's actual requirements. The protester has taken issue with 12 specific requirements in the IFB, contending that specifications for various aspects of the receiver's technical capabilities and

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design features should have been more restrictively drafted. The protester argues that receivers of this type are "typically used in extremely critical information-gathering systems where component performance, reliability and field support are essential to the mission" and that commercial-grade receivers, as described in the specifications, would therefore be inadequate to meet this requirement.

The Navy activity requiring these radios, the Naval Electronics Systems Engineering Center, states, however, that its needs can be met by standard (or modified) commercial products and that the agency's minimum needs are reflected accurately in the specifications as written.

It is a general rule of federal procurement that specifications should be drafted in such a manner that competition is maximized, unless a restrictive requirement is necessary to meet the government's legitimate minimum needs. See Hydro Dredge Corp., B-215873, Feb. 4, 1985, 85-1 CPD ¶ 132. The role of the General Accounting Office in resolving bid protests is to ensure that the statutory requirements for "full and open competition" have been met. Thus, a protester's presumable interest as a beneficiary of more restrictive specifications is not protectable under our bid protest function absent evidence of fraud or willful misconduct by procurement officials. Ray Service Co., 64 Comp. Gen. 528 (1985), 85-1 CPD ¶ 582; no such evidence has been presented by CMC. Therefore, we will not consider further CMC's allegation that more restrictive specifications are necessary to serve the government's interest.

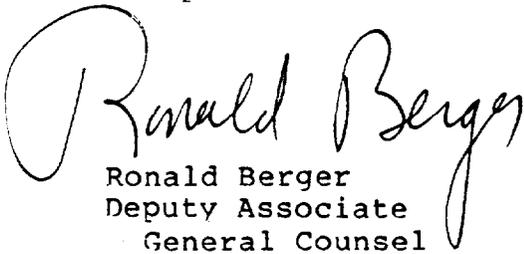
CMC also notes that the Buy American Act and the Walsh-Healey Public Contracts Act apply to this solicitation and argues that the specifications as written do not "reflect the spirit" of these laws. The protester reasons, in this regard, that an inexpensive, consumer grade receiver imported from an off-shore supplier could meet the specifications, thwarting the intent of the Buy American Act, and that a bidder offering to supply imported equipment would not meet the "regular dealer" or "manufacturer" criteria under the Walsh-Healey Act.

Our Office will not consider a protest alleging that other bidders do not qualify as manufacturers or regular dealers under the Walsh-Healey Public Contracts Act, since the agency's determination concerning the status of an offeror under that act is subject to review by the Small Business Administration (if a small business is involved) and the Department of Labor, not the General Accounting Office.

Datametrics Corp., B-219617, Aug. 1, 1985, 85-2 CPD ¶ 122. We therefore will not consider this portion of the protest further.

Regarding CMC's concern that the IFB might attract suppliers of imported equipment, we point out that the Buy American Act does not prohibit procurement of foreign end products, nor does it require the disqualification of a bidder who offers a foreign end product. Rather, the act and its implementing regulations provide a preference for domestic items which is established through the use of an evaluation differential added to the price of the foreign item. Tritan Corp., B-218306, May 24, 1985, 85-1 CPD ¶ 601. We therefore find no valid basis of protest in CMC's argument in this regard.

The protest is dismissed.


Ronald Berger
Deputy Associate
General Counsel